

AMENDED IN ASSEMBLY JUNE 26, 2003

SENATE BILL

No. 67

Introduced by Senator Bowen

January 17, 2003

An act to amend ~~Section~~ *Sections 399.12 and 399.14* of the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 67, as amended, Bowen. Energy: California Renewables Portfolio Standard Program.

Existing law establishes the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, ~~as defined~~, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). *Existing law defines the term "eligible renewable energy resource" to include an electric generating facility that meets an existing definition of "in-state renewable electricity generation technology" and the output of a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of January 1, 2003, for purposes of establishing the baseline of an electrical corporation for purposes of the program.* Under existing law, the Public Utilities Commission may not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until it is deemed creditworthy by the commission. Existing law requires the commission to direct electrical corporations to prepare, within 90 days of being deemed creditworthy,

and to review and update as necessary, renewable energy procurement plans that are sufficient to satisfy its obligations under the renewables portfolio standard. Existing law requires the commission to allow an electrical corporation to recover, in rates, electricity procurement and administrative costs associated with long-term contracts reasonably incurred consistent with a renewable energy procurement plan approved by the commission.

This bill would ~~instead require that~~ *modify the definition of the term “eligible renewable energy resource” to include an electric generating facility that meets that existing definition of “in-state renewable electricity generation facility,” subject to certain limitations. Included in those limitations, the bill would make eligible the output of an existing hydroelectric generation facility of 30 megawatts or less only if it was owned, or its output was procured, by an electrical corporation as of January 1, 2003, and would further limit that eligibility to the establishment of the baseline of an electrical corporation for purposes of the program. The bill would prohibit the Public Utilities Commission not require* commission from requiring an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until the commission determines either that the electrical corporation has attained an investment grade credit rating or that the electrical corporation is able to procure eligible renewable energy resources on reasonable terms, those resources can be financed if necessary, and the procurement will not impair the restoration of an electrical corporation’s creditworthiness. The bill would clarify that the provision allowing an electrical corporation to recover, in rates, electricity procurement and administrative costs associated with long-term contracts applies to contracts entered into pursuant to the California Renewables Portfolio Standard Program. *The bill would make other clarifying changes.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *Section 399.12 of the Public Utilities Code is*
- 2 *amended to read:*
- 3 399.12. For purposes of this article, the following terms have
- 4 the following meanings:

(a) ~~(1)~~ “Eligible renewable energy resource” means an electric generating facility that ~~is one of the following:~~

~~(1) The facility meets the definition of “in-state renewable electricity generation technology” in Section 383.5-~~

~~(2), subject to the following limitations:~~

(1) A geothermal generation facility originally commencing operation prior to September 26, 1996, shall be eligible for purposes of adjusting a retail seller’s baseline quantity of eligible renewable energy resources except for output certified as incremental geothermal production by the *State Energy Resources Conservation and Development* Commission, provided that the incremental output ~~was~~ is not sold to an electrical corporation under a contract entered into prior to September 26, 1996. For each facility seeking certification, the *State Energy Resources Conservation and Development* Commission shall determine historical production trends and establish criteria for measuring incremental geothermal production that recognizes the declining output of existing steamfields and the contribution of capital investments in the facility or wellfield.

~~(3)-~~

(2) The output of ~~a small~~ *an existing* hydroelectric generation facility of 30 megawatts or less ~~procured or owned by an electrical corporation as of the date of enactment of this article~~ shall be eligible only for purposes of establishing *if it was owned, or its output was procured, by an electrical corporation as of January 1, 2003, and that eligibility shall be limited to the establishment of* the baseline of an electrical corporation pursuant to paragraph (3) of subdivision (a) of Section 399.15. A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

~~(4)-~~

(3) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996. Output from such facilities shall be eligible only for the purpose of adjusting a retail seller’s baseline quantity of eligible renewable energy resources.

(b) “Retail seller” means an entity engaged in the retail sale of electricity to end-use customers, including any of the following:

1 (1) An electrical corporation, as defined in Section 218.

2 (2) A community choice aggregator. The commission shall
3 institute a rulemaking to determine the manner in which a
4 community choice aggregator will participate in the renewables
5 portfolio standard subject to the same terms and conditions
6 applicable to an electrical corporation.

7 (3) An electric service provider, as defined in Section 218.3
8 subject to the following conditions:

9 (A) An electric service provider shall be considered a retail
10 seller under this article for sales to any customer acquiring service
11 after January 1, 2003.

12 (B) An electric service provider shall be considered a retail
13 seller under this article for sales to all its customers beginning on
14 the earlier of January 1, 2006, or the date on which a contract
15 between an electric service provider and a retail customer expires.
16 Nothing on this subdivision may require an electric service
17 provider to disclose the terms of the contract to the commission.

18 (C) The commission shall institute a rulemaking to determine
19 the manner in which electric service providers will participate in
20 the renewables portfolio standard. The electric service provider
21 shall be subject to the same terms and conditions applicable to an
22 electrical corporation pursuant to this article. Nothing in this
23 paragraph shall impair a contract entered into between an electric
24 service provider and a retail customer prior to the suspension of
25 direct access by the commission pursuant to Section 80110 of the
26 Water Code.

27 (4) “Retail seller” does not include any of the following:

28 (A) A corporation or person employing cogeneration
29 technology or producing power consistent with subdivision (b) of
30 Section 218.

31 (B) The Department of Water Resources acting in its capacity
32 pursuant to Division 27 (commencing with Section 80000) of the
33 Water Code.

34 (C) A local publicly owned electrical utility as defined in
35 subdivision (d) of Section 9604.

36 (c) “Renewables portfolio standard” means the specified
37 percentage of electricity generated by eligible renewable energy
38 resources that a retail seller is required to procure pursuant to
39 Sections 399.13 and 399.15.

SEC. 2. Section 399.14 of the Public Utilities Code is amended to read:

399.14. (a) The commission shall direct each electrical corporation to prepare renewable energy procurement plans as described in paragraph (3) to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(1) (A) The commission shall not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until the commission determines either of the following:

(i) The electrical corporation has attained an investment grade credit rating as determined by at least two major rating agencies.

(ii) The electrical corporation is able to procure eligible renewable energy resources on reasonable terms, those resources can be financed if necessary, and the procurement will not impair the restoration of an electrical corporation's creditworthiness.

(B) Within 90 days of ~~being deemed creditworthy~~ *the commission's determination* as provided in subparagraph (A), an electrical corporation shall conduct solicitations to implement a renewable energy procurement plan. ~~The creditworthiness~~ determination required by this paragraph shall apply only to the requirements established pursuant to this article. The requirements established for an electrical corporation pursuant to Section 454.5 shall be governed by that section.

(2) Not later than six months after the effective date of this section, the commission shall adopt, by rule, for all electrical corporations, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources. In order to ensure that the market price established by the commission pursuant to subdivision (c) of Section 399.15 does not influence the amount of a bid submitted through the competitive solicitation in a manner

1 that would increase the amount ratepayers are obligated to pay for
2 renewable energy, and in order to ensure that the bid price does not
3 influence the establishment of the market price, the electrical
4 corporation shall not transmit or share the results of any
5 competitive solicitation for eligible renewable energy resources
6 until the commission has established market prices pursuant to
7 subdivision (c) of Section 399.15.

8 (B) A process that provides criteria for the rank ordering and
9 selection of least-cost and best-fit renewable resources to comply
10 with the annual California Renewables Portfolio Standard
11 Program obligations on a total cost basis. This process shall
12 consider estimates of indirect costs associated with needed
13 transmission investments and ongoing utility expenses resulting
14 from integrating and operating eligible renewable energy
15 resources.

16 (C) Flexible rules for compliance including, but not limited to,
17 permitting electrical corporations to apply excess procurement in
18 one year to subsequent years or inadequate procurement in one
19 year to no more than the following three years.

20 (D) Standard terms and conditions to be used by all electrical
21 corporations in contracting for eligible renewable energy
22 resources, including performance requirements for renewable
23 generators.

24 (3) Consistent with the goal of procuring the least-cost and
25 best-fit eligible renewable energy resources, the renewable energy
26 procurement plan submitted by an electrical corporation shall
27 include, but is not limited to, all of the following:

28 (A) An assessment of annual or multiyear portfolio supplies
29 and demand to determine the optimal mix of renewable generation
30 resources with deliverability characteristics that may include
31 peaking, dispatchable, baseload, firm, and as-available capacity.

32 (B) Provisions for employing available compliance flexibility
33 mechanisms established by the commission.

34 (C) A bid solicitation setting forth the need for renewable
35 generation of each deliverability characteristic, required online
36 dates, and locational preferences, if any.

37 (4) In soliciting and procuring eligible renewable energy
38 resources, each electrical corporation shall offer contracts of no
39 less than 10 years in duration, unless the commission approves of
40 a contract of shorter duration.

1 (5) In soliciting and procuring eligible renewable energy
2 resources, each electrical corporation may give preference to
3 projects that provide tangible demonstrable benefits to
4 communities with a plurality of minority or low-income
5 populations.

6 (b) The commission shall review and accept, modify, or reject
7 each electrical corporation's renewable procurement plan 90 days
8 prior to the commencement of renewable procurement pursuant to
9 this article by the electrical corporation.

10 (c) The commission shall review the results of a renewable
11 energy resources solicitation submitted for approval by an
12 electrical corporation and accept or reject proposed contracts with
13 eligible renewable energy resources based on consistency with the
14 approved renewable procurement plan. If the commission
15 determines that the bid prices are elevated due to a lack of effective
16 competition amongst the bidders, the commission shall direct the
17 electrical corporation to renegotiate such contracts or conduct a
18 new solicitation.

19 (d) If an electrical corporation fails to comply with a
20 commission order adopting a renewable procurement plan, the
21 commission shall exercise its authority pursuant to Section 2113
22 to require compliance.

23 (e) Upon application by an electrical corporation, the
24 commission may authorize another entity to enter into contracts on
25 behalf of customers of the electrical corporation for deliveries of
26 eligible renewable energy resources to satisfy the annual portfolio
27 standard obligations, subject to similar terms and conditions
28 applicable to an electrical corporation. The commission shall
29 allow the procurement entity to recover reasonable costs through
30 retail rates subject to review and approval.

31 (f) Procurement and administrative costs associated with
32 long-term contracts entered into by an electrical corporation for
33 eligible renewable energy resources pursuant to this article, at or
34 below the market price determined by the commission pursuant to
35 subdivision (c) of Section 399.15, shall be deemed reasonable per
36 se, and shall be recoverable in rates.

37 (g) For purposes of this article, "procure" means that a utility
38 may acquire the renewable output of electric generation facilities
39 that it owns or for which it has contracted. Nothing in this article
40 is intended to imply that the purchase of electricity from third

1 parties in a wholesale transaction is the preferred method of
2 fulfilling a retail seller's obligation to comply with this article.

3 (h) Construction, alteration, demolition, installation, and
4 repair work on an eligible renewable energy resource that receives
5 production incentives or supplemental energy payments pursuant
6 to Section 383.5, including, but not limited to, work performed to
7 qualify, receive, or maintain production incentives or
8 supplemental energy payments is "public works" for the purposes
9 of Chapter 1 (commencing with Section 1720) of Part 7 of
10 Division 2 of the Labor Code.

11 ~~SEC. 2.~~

12 *SEC. 3.* No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.

